

**Opening of the Legal Year
(12 January 2009)**

Speech by the Chairman of the Hong Kong Bar Association

Chief Justice, Secretary for Justice, President of the Law Society, Judges, Members of the Legal Profession, Distinguished Guests, Ladies and Gentlemen:

1. First of all, let me on behalf of the Bar extend our warmest welcome to the eminent leaders of the legal profession from other jurisdictions.
2. The last Opening of the Legal Year is the very first time representatives from other jurisdictions were invited to join us. This year, both the number of our guests as well as the number of jurisdictions they represent have increased. I very much hope we are starting a tradition that will continue in the many years to come. Globalization has changed the practice of law and it is increasingly important for legal practitioners to keep abreast of developments in other jurisdictions. Occasions such as this, together with the follow-up programme jointly organized by the Bar and the Law Society, can provide good opportunities for interflow.
3. Hong Kong is facing a difficult time. The worldwide financial crisis is affecting our economy and no one knows when the crisis will come to an end. While such an unprecedented financial turmoil calls for robust economic and fiscal measures, it is important to bear in mind the close and interactive relationship between our legal system and our economic development. In difficult times, it is all the more important to steadfastly adhere to the rule of law and to make extra efforts to improve our legal infrastructure so as to maintain a fair and just society, as well as to improve Hong Kong's position as an international financial centre and a legal services hub for the region and beyond.
4. An efficient legal infrastructure has at least three major aspects: first, a body of laws and regulations that can keep pace with the community's social and economic development; second, an effective and accessible disputes resolution system; third, a pool of legal professionals who can provide quality services. In the past, Hong Kong has made achievements that we should be proud of. However, past achievements do not justify complacency. The list of tasks that require action is not a short one.

5. As an international financial centre, a proper and effective regulatory regime is the key to maintain confidence in our system. The present financial crisis has highlighted the need to conduct constant review of our regulatory regime. The current regulatory framework supervised by the Hong Kong Monetary Authority, the Securities and Futures Commission and the Office of the Commissioner for Insurance is largely based on the traditional model in that different types of institutions are regulated by different regulators pursuant to different sets of rules. The Lehman mini-bonds incident raises the question of whether our existing supervisory framework remains appropriate in view of the blurring of institutional and product boundaries, and whether Hong Kong should develop a new regulatory framework that can provide sufficient investors protection without over regulating the market.
6. Our criminal justice system is another aspect that requires attention. Not only may bad financial climate lead to more criminal activities, more cases of commercial fraud is likely to be revealed when companies go into liquidation. A current phenomenon that has caused concerns is that many commercial fraud cases, including the substantial and complex ones, are heard before the District Court instead of before a jury in the Court of First Instance. Queries have been raised as to why persons accused of serious commercial fraud should not be given an option to have their cases heard before a jury and why the choice of Court rests solely with the Prosecution when the defendants' reputation and liberty are at stake. These queries certainly merit serious consideration and follow-up action.
7. Proper administration of justice cannot be achieved unless there is an efficient and fair dispute resolution system. The Civil Justice Reform that will be implemented in April this year will start a new chapter in the history of our civil justice system. Successful implementation of this reform requires not only new legislative provisions and rules, but a change in litigation culture and mentality. Members of the profession should always bear in mind that the ultimate aim is to serve the end-users of the system, so that disputes can be resolved in a fair, just and cost-effective manner.
8. The Bar supports the Civil Justice Reform and welcomes its implementation. Seminars and training courses have been and will continue to be organized for its members so as to prepare them for the

new regime. The responses to those training courses are encouraging. Come April this year, I am confident that the Bar will be ready for the new regime.

9. Consistent with the international trend, one of the aspects of the Civil Justice Reform is the promotion of mediation. The Bar is in support of this move and has been arranging training programme to equip its members to act as mediators, mediation advocates as well to provide advice on matters relating to mediation and other forms of alternative dispute resolution. So far, two mediator skills training courses have been organized for our members with the assistance of the Centre for Effective Dispute Resolution, a London-based institution specializing in mediation. A third one will be held in March this year. In addition, the Bar and the Law Society have entered into an arrangement with the dispute resolution section of the International Chambers of Commerce whereby mediation training course can be organized on an annual basis for a term of three years. The first one was held in last November and participants had the opportunity to learn from internationally acclaimed mediators. In addition, seminars chaired by local practitioners and institutions were and will continue to be organized.
10. Alternative dispute resolution such as mediation cannot be properly promoted unless there are suitable venues where different forms of dispute resolution can be properly conducted. In some other jurisdictions, sophisticated facilities and specially designed premises are available for conducting mediation. I regret to say Hong Kong has yet to catch up in this aspect. The Hong Kong International Arbitration Centre is very well managed, but the premises and facilities are hardly sufficient to meet the increasing demand. To develop Hong Kong into an international dispute resolution centre, the Government should provide premises of a sufficient size for establishing a worldclass dispute resolution centre as soon as possible.
11. Admittedly, land resources in Hong Kong are limited and valuable. The Government may also have budgetary concern in view of the current economic climate. However, the economic benefits and competitive advantages that will be brought about by the establishment of a dispute resolution centre far outweigh the cost consideration.
12. Another aspect that also requires attention is our legal aid system. Access to justice by the less privileged sector in our community is

already an issue before the financial turmoil. When times are difficult, it is even more important to ensure that justice will not be denied to those who have a meritorious case simply because they cannot afford private legal representation.

13. In September 2005, the Law Reform Commission published a Consultation Paper on Conditional Fees. Having rightly rejected the proposal to implement conditional fees in Hong Kong, the Law Reform Commission's Report published in July 2007 recommended the expansion of the Supplementary Legal Aid Scheme by raising the financial eligibility limits and increasing the types of cases covered by the scheme. Such a recommendation has widespread support and the proposal should be implemented soonest possible.
14. This year is a special year for the Bar. It is the 60th anniversary of the establishment of the Hong Kong Bar Association. Throughout the past 6 decades, the Bar has undergone substantial changes. One thing that has not changed is the Bar's pledge to maintain the rule of law and proper administration of justice in Hong Kong. In the years to come, the Bar will continue to uphold the rule of law and to act in the best interests of Hong Kong.
15. It remains for me to wish all of you a happy and prosperous year of 2009.

Rimsky Yuen, S.C.
Chairman of the Hong Kong Bar Association
12 January 2009

2009 年法律年度開幕典禮

(2009 年 1 月 12 日)

大律師公會主席之開幕致辭

終審法院首席法官、律政司司長、律師會會長、法官閣下、法律界同業、各位嘉賓、女士們、先生們：

1. 首先，容許我代表香港大律師公會熱誠歡迎來自外地法律界的翹楚。
2. 去年的法律年度開幕，-外地法律界代表首次應邀參與。本年的嘉賓人數及他們代表的地區數目均較去年為多。本人十分希望這剛萌芽的傳統能薪火相傳下去。全球化為法律服務業帶來了改變，亦增加了法律人員了解其他地區的發展的重要性。這個開幕典禮及其後大律師公會與律師會協辦的項目，正是交流的良好契機。
3. 香港正面對着艱難的時刻。席捲全球的金融危機對我們的經濟帶來嚴峻的考驗，此危機何時完結亦不得而知。面對這史無前例的金融危機，我們需要強而有力的經濟及金融應對措施。同

時，我們亦應謹記法律制度與經濟發展的相互關係。在艱難的時刻，我們更應堅守法治精神，並加大力度去改善我們的法制建設，從而維護社會公義，深化香港作為國際金融中心及法律服務樞紐的地位。

4. 有效的法制基建必須具備三大要素。第一，能配合社會及經濟發展的法律及法規。第二，有效及便利的糾紛排解機制。第三，能提供完善法律服務的法律隊伍。香港過往在法制方面的成績足可令我們引以為榮。然而，過去的成就不能作為自滿的藉口。需要改善和跟進的工作亦不少。

5. 作為國際金融中心，恰當和有效的監管制度是維護信心的關鍵。當下的金融危機凸顯了定時檢討監管制度的需要。現行由金管局、證監會及保險業監理處主導的監管制度大體上沿用傳統的模式，不同的機構由不同的監管單位依據不同的法規進行監督。雷曼迷你債券衍生的糾紛，帶出一個重要的問題：當不同機構和產品的分界不再像從前般清晰時，現行的監管制度是否仍然恰當，香港應否發展新的監管機制，令投資者得到充份保障之餘亦不會對市場構成過份規管。

6. 刑事司法制度是值得注視的另一環。金融危機不單可能導致更多罪案的發生，公司倒閉時亦每每令更多商業詐騙案曝光。現時一個令人關注的情況，是很多商業詐騙案均在區域法院審理（當中更不乏複雜的詐騙案），而非在高等法院原訟庭由陪審團進行審理。這情況令人質疑為何這些商業詐騙案的被告無權選擇由陪審團去決定他們是否有罪，為何單是檢控一方才有權決定在那一級法院進行檢控，尤其是刑事檢控可令致被告喪失人身自由，及令其名譽嚴重受損。有關當局應檢討這情況，並採取相應措施。
7. 有效及公平的爭議解決機制是民事司法制度不可或缺的一環。即將在本年四月實施的「民事司法改革」將會是我們民事司法制度歷史新的一頁。這改革的成功，不能只依賴新的法規，業界還應在訴訟文化和理念上作出相應的改變。法律界應謹記改革的最終目的是服務司法制度的使用者，令他們的紛爭能以公平、公正及合乎經濟效益的方法來妥善解決。
8. 大律師公會支持民事司法改革，並歡迎它的實施，為裝備會員適應新的法規，大律師公會安排了大小不同的研討會和培訓課程。會員的反應亦令人鼓舞。我相信大律師團隊能在四月來臨

時已能為新的民事司法制度做好準備。

9. 隨着國際趨勢，民事司法制度改革的其中一個方針是推動調解作為解決爭議的模式。大律師公會支持這方針，並安排了培訓課程，協助會員成為調解員，及增進他的作為調解辯護人和提供調解相關事項的法律意見。到目前止，大律師公會已與以倫敦為基地的 Centre for Effective Dispute Resolution 共同協辦了兩次調解員培訓課程，第三屆培訓課程將在本年三月進行。再者，大律師公會聯同律師會亦與國際總商會 (International Chambers of Commerce) 的相關部門訂立了為期三年的協議，三方共同在香港每年舉辦一次調解培訓課程。首次的課程已在去年 11 月舉辦。參與者有機會向國際頂尖的調解員討教。此外，大律師公會亦與本地執業人士和相關機構協辦其他調解研討會和講座。
10. 除非有合適的場所，否則很難完善推動諸如調解的「解決爭議替代方法」 (alternative dispute resolution) 。其他司法管轄區不單有先進的設施，更有專門為調解設計的場所，以便利進行調解工作。遺憾地，香港在這方面仍需急起直追，雖然「香港仲裁中心」的管理完善，但場地及設施均不能應付與日俱增的

需求。要將香港發展成爲一個國際爭議排解中心，香港政府應盡快提供有足夠空間的場地，以便設立一個世界級的爭議排解中心。

11. 毋容諱言，香港土地資源有限而且十分珍貴。在現今經濟環境下，政府亦可能有財政預算上的考慮。然而，成立爭議排解中心帶來的經濟效益及競爭優勢將會遠超當中涉及的成本。
12. 另一值得關注的課題是我們的法律援助制度。金融危機發生前，社會上的弱勢社群是否有能力透過我們的司法制度獲得公義已是一個要正視的問題。現時經濟環境變壞，我們更應確保那些有合理法律依據的人士，不會單單因爲無能力聘請私人律師而未能得到司法公義。
13. 2005 年 9 月，法律改革委員會就「按條件收費」發表諮詢文件。2007 年 7 月，法律改革委員會提交報告，恰當地否決推行「按條件收費」，並同時建議擴大「法律援助輔助計劃」，建議提升財務資源上限及擴大案件種類。該建議獲廣泛支持，有關當局應盡快落實。
14. 本年對大律師公會別具意義，就是本會創立 60 週年。在過去

60 年間，大律師這行業經歷了重大改變。有一點從不變改的，是大律師公會對法治和維護司法公義的堅持。在未來的歲月，大律師公會將繼續維護法治及以公眾利益為大前提而行事。

15. 最後，我祝願大家有一個愉快和豐盛的 2009 年。

袁國強資深大律師
香港大律師公會主席
2009 年 1 月 12 日